

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BHOLA PAGE,

CASE NO. C19-1244JLR

Petitioner,

ORDER OF DISMISSAL

V.

ICE FIELD OFFICE DIRECTOR,

Respondent.

I. INTRODUCTION

Before the court are (1) the report and recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, on Respondent ICE Field Office Director’s (the “Government”) motion to dismiss and return (R&R (Dkt. # 9); MTD (Dkt. # 5)), and (2) *pro se* Petitioner Bhola Page’s motion for appointment of counsel (MFA (Dkt. # 10)). Having carefully reviewed the foregoing, the parties’ submissions, and the governing law, the court ADOPTS the Report and Recommendation, DENIES

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1 Petitioner's motion for appointment of counsel without prejudice, and DISMISSES
2 Petitioner's action without prejudice.

3 **II. BACKGROUND**

4 Petitioner, a native and citizen of India who is currently detained at the Northwest
5 Detention Center in Tacoma, Washington, bring this 28 U.S.C. § 2241 immigration
6 habeas action to obtain release from immigration detention. (*See* Pet. (Dkt. # 1).) The
7 Government moved to dismiss on September 19, 2019. (*See generally* MTD.) On
8 September 27, 2019, Petitioner filed a motion to withdraw his habeas petition,
9 acknowledging the recent developments in the Government's attempts to obtain a travel
10 document and stating that he will refile his case at a later date. (MTW (Dkt. # 8) at 1.)
11 The Government did not object to Petitioner's motion to withdraw. (*See generally* Dkt.)
12 Accordingly, on October 30, 2019, Magistrate Judge Theiler issued a report and
13 recommendation recommending that the court grant Petitioner's motion to withdraw,
14 deny the Government's motion to dismiss as moot, and dismiss Petitioner's habeas
15 petition without prejudice. (*See* R&R at 2; Prop. Order (Dkt. # 9-1) at 1-2.)

16 On November 8, 2019, Petitioner filed a motion for appointment of counsel. (*See*
17 MFA.) Petitioner states that he does not have the funds to hire private counsel and that
18 his attempts to retain *pro bono* counsel have been unsuccessful. (*See id.* at 1.)
19 Accordingly, Petitioner asks the court to appoint counsel for him. (*See id.*) Additionally,
20 in what appears to be a response to Magistrate Judge Theiler's report and
21 recommendation, Petitioner states that he "does not understand[] why he would not be
22 precluded/ allowed to bring [*sic*] another 28 U.S.C. § 2241 challenge later. If this is the

1 case, then the Petitioner does not want to withdraw [his] 28 U.S.C. § 2241 motion.” (*Id.*
2 at 2.)

3 **III. ANALYSIS**

4 **A. Report and Recommendation**

5 A district court has jurisdiction to review a Magistrate Judge’s report and
6 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). “The district judge must
7 determine de novo any part of the magistrate judge’s disposition that has been properly
8 objected to.” *Id.* “A judge of the court may accept, reject, or modify, in whole or in part,
9 the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

10 The court reviews de novo those portions of the report and recommendation to which
11 specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
12 (9th Cir. 2003) (en banc). “The statute makes it clear that the district judge must review
13 the magistrate judge’s findings and recommendations de novo if objection is made, but
14 not otherwise.” *Id.* Because Petitioner is proceeding *pro se*, the court must interpret his
15 filings liberally. *See Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003).

16 Because the portion of Petitioner’s motion for appointment of counsel stating that
17 “Petitioner does not want to withdraw [his] 28 U.S.C. § 2241 motion” if Magistrate Judge
18 Theiler’s report and recommendation would preclude him from re-filing his petition
19 relates to Magistrate Judge Theiler’s findings (*see* MFA at 2), the court construes that
20 portion of the motion as an objection to Magistrate Judge Theiler’s report and
21 recommendation. The objection misinterprets Magistrate Judge Theiler’s report and
22 recommendation. Magistrate Judge Theiler noted that “even if the Court considered the

1 merits of the Government's the motion to dismiss and dismissed the action on that basis,
2 petitioner would not be precluded from bringing another § 2241 action challenging his
3 continued detention at a later date, as he apparently intends to do.” Thus, Magistrate
4 Judge Theiler found that Petitioner would *not* be precluded from filing another petition,
5 meaning Petitioner’s concerns are misplaced.

6 The court has thoroughly examined the record before it and finds Magistrate Judge
7 Theiler’s reasoning persuasive in light of that record. Accordingly, the court ADOPTS
8 Magistrate Judge Theiler’s report and recommendation, GRANTS Petitioner’s motion to
9 withdraw, DENIES as moot the Government’s motion to dismiss, and DISMISSES this
10 action without prejudice.

11 **B. Motion for Appointment of Counsel**

12 Pursuant to 18 U.S.C. § 3006A, a district court may appoint counsel in the
13 “interests of justice” in a case brought under 28 U.S.C. § 2241. 18 U.S.C.
14 § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). “In deciding
15 whether to appoint counsel in a habeas proceeding, the district court must evaluate the
16 likelihood of success on the merits as well as the ability of the petitioner to articulate his
17 claims *pro se* in light of the complexity of the legal issues involved.” *Weygandt v. Look*,
18 718 F.2d 952, 954 (9th Cir. 1983). In light of the fact that the court resolved Petitioner’s
19 only concern with Magistrate Judge Theiler’s report and recommendation and is granting
20 Petitioner’s motion to withdraw and dismissing his petition without prejudice, the court
21 will not appoint counsel at this time. Thus, Petitioner’s motion to appoint counsel is
22 DENIED without prejudice.

IV. CONCLUSION

In conclusion, the Court finds and ORDERS:

- (1) The Court ADOPTS the Report and Recommendation (Dkt. # 9);
- (2) Petitioner's motion to withdraw (Dkt. # 8) is GRANTED;
- (3) The Government's motion to dismiss (Dkt. # 5) is DENIED as moot;
- (4) Petitioner's motion for appointment of counsel (Dkt. # 10) is DENIED without prejudice;
- (5) This action is DISMISSED without prejudice; and
- (6) The Clerk is directed to send copies of this Order to the parties and to Judge Theiler.

Dated this 22nd day of November, 2019.

John P. Blit

JAMES L. ROBART
United States District Judge